

providers are not liable and should not be billed for fraudulent calls that occur when network services fail.<sup>2/</sup>

The only parties who seriously dispute the basic proposition that independent payphone providers should not be liable when network screening or blocking services fail are IXC's.<sup>3/</sup> The IXC's' stratagems to avoid or delay a ruling should not be allowed to prevent the Commission from adopting this simple, clear policy.

Some IXC's object to the petition on the grounds that fraud is "a complex problem" and "should be addressed in a comprehensive manner rather than merely addressing the problem for [payphone operators]." Comments of MCI at 2. See also Comments of AT&T at 3; Comments of the Interexchange Carrier Industry Committee Toll Fraud Subcommittee at 2. APCC does not dispute the need to address fraud in a comprehensive manner. However, FPSC requests a narrow ruling on a relatively simple aspect of the overall fraud problem. While we do not dispute that fraud in general is a "complex" issue, in this case the problem and the solution are quite simple. When a payphone provider orders network blocking and screening and a call occurs of the type which should have been prevented by the network services, the payphone provider should not be liable for the charges for the

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<sup>2/</sup> While all the commenting LECs appear to accept this proposition, only their trade association, the United States Telephone Association ("USTA"), objects. USTA complains that "exchange carriers have no avenue to question the pay telephone provider's self-serving conclusion that a call was fraudulently made or that the screening service was ineffective . . . ." Comments of USTA at 4-5. The LECs do not need to be told when their services have been ineffective. The LECs provide the screening services and also generally provide billing and collection for IXC's. If a LEC is asked to bill for a call of a type which should have been prevented by a screening service ordered by the subscriber, it is obvious that the call is fraudulent and that the screening service has not been effective.

<sup>3/</sup> Sprint apparently does not dispute that the FPSC proposal has merit, but contends that it "hardly seems a worthwhile use of . . . resources for the FCC to institute a general rulemaking" on the subject, because cases covered by the rule "must be extremely rare." Comments of Sprint at 6-7, 5. The comments of 15 payphone associations and companies clearly indicate otherwise. In any event, the problem can be easily resolved by adopting the simple, obviously fair solution proposed by the FPSC, and no excessive use of FCC resources will be required.

call. As APCC explained in its comments, independent payphone providers, among all subscribers, are uniquely vulnerable to being unfairly billed for fraudulent calls. Since it is clearly appropriate to grant the relief requested in the FPSC petition, such relief should not be denied or delayed merely because there are other, more complex issues associated with other types of fraud.<sup>4/</sup>

AT&T is the only IXC which attempts to address the specifics of the FPSC petition. AT&T concedes the underlying proposition of the petition that "toll fraud liability should be apportioned in accordance with fault." Comments of AT&T at 3. AT&T also concedes that the Florida rule should govern failures of OLS screening, as well as, apparently, failures of BNS screening on domestic calls. Id. at 5-6. However, with respect to BNS failures on international calls, AT&T argues that the presents of a "fourth party," the foreign PTT, complicates matters.

According to AT&T, access to LEC LIDB data bases is available to PTT operators as well as to domestic IXCs, but the PTTs do not always take advantage of such access. Id. at 6 and n. 3. AT&T contends that IXCs cannot "dictate the activities of foreign PTT operators," and that payphone providers should continue to be billed for such calls in order to encourage payphone providers to use "available" measures that prevent the PTT operator from inadvertently connecting collect calls." Id. at 6.

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<sup>4/</sup> MCI also that the FPSC's proposal would make LECs and IXCs into "de facto 'insurers'" of payphone providers, "thus rendering them risk-free and capable of engaging in inadequate business practices with impunity." Comments of MCI at 3. The FPSC does not propose any total insulation of payphone providers from liability. Payphone providers will continue to have incentives to deploy a variety of payphone-based safeguards in order to prevent fraud which is not covered by network screening and blocking services. Comments of Intellicall, Exh. 1. All the FPSC is requesting is that the LECs and IXCs – whose networks, after all, are what is being defrauded – should not try to make the payphone providers pay when the network fraud prevention services fail to work.

AT&T's position is patently unfair. It is AT&T and other IXC's (and LECs) who complete these international collect calls and bill them to independent payphone providers. IXC's (and LECs) also receive a share of the revenue collected by PTTs for these calls. The parties who complete the fraudulent calls and derive revenue from them should be responsible, and should not be allowed to shift their responsibility by billing the payphone provider. It would appear that IXC's and LECs can influence the behavior of foreign PTTs by refusing to bill international collect calls to payphones subscribing to BNS. See Comments of Ameritech, Attachment A.

Payphone providers have done all they can when they subscribe to BNS. While the assignment of special blocks of line numbers also would be an effective measure to prevent fraudulent international collect calls, the adoption of such a measure depends on the LECs. Indeed, as AT&T points out, a special number assignment policy used to be in force, but "the system has largely been abandoned by the LECs since divestiture, at least with respect to private pay telephone providers." Comments of AT&T at 7 (emphasis added). There have been discussions about changing this policy, but while the vast majority of LEC payphones have continued to use special 8000/9000 numbers, most independent payphones have not been assigned such numbers.<sup>5/</sup> Certainly, such numbers should be assigned to independent payphones whenever available. However, the unavailability or LEC unwillingness to assign such numbers is not something that independent payphone providers can control.<sup>6/</sup>

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<sup>5/</sup> This is one more example of the LECs' disparate treatment of independent and LEC payphones which renders the former unfairly vulnerable to fraud.

<sup>6/</sup> The other alternative suggested by AT&T, the use of "cuckoo" tones, has never been regularly used in this country, even with respect to LEC payphones. Even assuming such tones could be effectively implemented... (continued...)

In summary, it is the network which is the vehicle through which fraudulent collect calls are placed. By subscribing to BNS the independent payphone provider has done its part to prevent incoming collect calls. It should be up to the owners of the network -- LECs, IXC's, and PTTs -- to ensure that such calls are not terminated at payphones subscribed to BNS.

Similarly, with respect to international direct dial blocking ("IDDB"), AT&T's position that IXC's should be allowed to bill payphone providers for international direct dial calls even though the payphone is subscribed to IDDB is unsound. By subscribing to IDDB, the payphone provider has done its part. In the event that IDDB fails, the IXC is in the best position to detect and prevent major fraud because the IXC can monitor traffic patterns on its own network in real time. When IDDB blocking fails, the IXC's recourse, if any, should be to the LEC, not the payphone provider.

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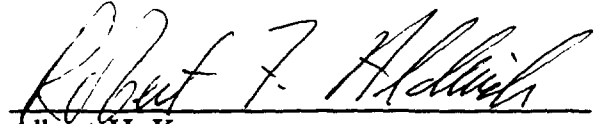
6/ (...continued)

mented within payphones, it would be cost prohibitive for every payphone provider to make such a modification in each of the roughly 300,000 or so independent payphones currently in place. It is more feasible to transmit cuckoo tones from LEC central offices, but LECs have been unwilling to implement such tones even with respect to their own payphones.

CONCLUSION

For the foregoing reasons, the FPSC petition should be GRANTED.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", written over a horizontal line.

Albert H. Kramer  
Robert F. Aldrich

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Council

Dated: July 2, 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 91-35
Operator Service Access and	)	
Pay Telephone Compensation	)	
	)	

**COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL**

The American Public Communications Council ("APCC") submits the following comments in response to the Commission's Order on Further Reconsideration and Further Notice of Proposed Rulemaking ("Notice" or "NPRM") in these proceedings, FCC 93-138, released April 9, 1993.

**BACKGROUND AND STATEMENT OF INTEREST**

APCC is a council of the North American Telecommunications Association ("NATA"), and is made up of more than 200 competitive providers of non-telephone company, or independent public payphones ("IPPs") and other public communications facilities. APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications.

An important problem of IPP providers is payphone fraud. Fraud is of major concern to IPP providers for a very simple reason. On the one hand, IPPs, like all payphones, are available for use by any member of the public. An IPP provider therefore has no significant control over who has access to the payphone. On the other hand, unlike local exchange carrier payphones ("LECPPs"), IPP providers are required to interconnect with the public network on essentially the same basis as subscribers who can control access to their telephones; i.e., the IPPs are required to use regular

business lines. Thus, IPP providers can be billed for calls that originate or terminate at the payphone in the same way as any other subscriber can be billed for calls that originate or terminate at its telephone.<sup>1</sup> This combination of circumstances makes IPP providers particularly vulnerable to fraud. There is virtually no control over who has access to the payphone, yet there is tremendous exposure to being billed for fraudulent calls.

For these reasons, APCC believes that federal initiatives to control fraud are critically important. APCC strongly supports the Commission's recent action, which the NPRM affirms, requiring LECs to offer federally tariffed international direct dial blocking service. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Order on Reconsideration, CC Docket No. 91-35, FCC 92-275, released July 10, 1992.

**I. FEDERAL TARIFFING OF ORIGINATING LINE SCREENING AND BILLED NUMBER SCREENING SERVICES IS NECESSARY TO PREVENT TOLL FRAUD AGAINST PAYPHONE PROVIDERS**

The Commission has ordered local exchange carriers ("LECs") to offer originating line screening ("OLS") and billed number screening ("BNS") services that "indicate to operator service providers [OSPs] any billing restrictions on lines to which a caller may seek to bill a call." Id., ¶ 56. As the Commission explained, "[w]ithout the availability of screening services, the

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<sup>1</sup> By contrast, local exchange carrier public payphones ("LECPPs") do not have "billable" numbers. The premises owner for a LECPP is not required to subscribe to the line and, therefore, is not billable for any fraudulent public payphone calls.

OSP may have no way of determining what billing restrictions apply to that line," which "could result in aggregators being fraudulently billed in some cases and in consumers being improperly denied access in other cases in which they do have proper billing authorization." Id., ¶ 21.

The Commission seeks comment on whether state or federal tariffing of LEC OLS and BNS services would better serve the public interest and prevent toll fraud. NPRM, ¶ 24. APCC believes that federal tariffing of these services is necessary (1) to ensure that effective OLS service is provided at reasonable rates; and (2) to ensure that the FCC can effectively regulate the provision of screening information on calls subject to its jurisdiction.

If OLS is to be effective, it must clearly identify to operator service providers ("OSPs") IPP lines subject to billing restrictions. APCC is concerned that such service is not now uniformly available. For example, some LECs do not offer a special class of service to IPPs, but instead provide only basic business service to IPPs. In some cases where IPP providers must subscribe to business service, the information digits which accompany the automatic number identification ("ANI") transmitted to the OSP identify the line as a regular business line -- and not as a payphone. Thus, the information digits do not inform the OSP that the line is a payphone subject to specific billing restrictions. Federal tariffing of OLS services will help ensure that all LECs provide effective OLS service to payphone providers.



Federal tariffing of OLS also is necessary to ensure that all LECs use the same information digits to identify IPP lines. If the LECs use different information digits to identify IPP lines, the ability of OSPs to properly identify the restrictions applicable to the line, and thereby prevent fraud, will be unduly complicated and undermined. Federal tariffing will ensure the use of uniform information digits for screening purposes.

Finally, federal tariffing will assist the Commission in ensuring that screening services function as intended and in exercising its jurisdiction to allocate liability when screening fails. See Florida Public Service Commission Petition for Review of Tariff Provisions Relating to Liability for Toll Fraud Charges, Public Notice, DA 93-390, released April 5, 1993.

## **II. STANDARDS FOR FEDERALLY TARIFFED SERVICES**

The Commission also seeks comments regarding its proposed requirements for OLS and BNS, including, inter alia, that OLS and BNS be provided at a "reasonable rate." NPRM, ¶¶ 16, 24. APCC notes that the Commission states that "we do not intend to preempt states from regulating the manner in which these screening services are provided in connection with intrastate communications services." NPRM, ¶ 8. In crafting requirements for OLS and BNS, however, the Commission must take into account the realities of the state tariff environment.

**A. Payphone Providers Should Not Be Assessed  
Duplicative Charges For Tariffed Screening  
Services**

Currently, state-tariffed OLS and BNS are offered to IPP providers in a variety of ways. Some LECs bundle OLS and BNS into the rate for basic service offered to IPPs. Others offer OLS and BNS as unbundled services or as part of a package of services which may include international blocking or other special services. Where OLS and BNS are offered as unbundled services, they typically are subject to a substantial recurring charge even though the only costs involved are minor one-time expenses. In all cases, even though the services are offered to IPP providers under state tariff, the screening information is available to IXCs and OSPs with respect to interstate and international calls as well as intrastate calls.

In APCC's view, the state-tariffed charges currently assessed on IPP providers for OLS and BNS far exceed the amount necessary to compensate LECs for any costs they incur in offering the services to IPP providers. Therefore, the Commission must make it clear that federally tariffed OLS and BNS, to the extent that they include charges to be assessed on IPP providers, are options that IPP providers may select in lieu of any similar screening services provided under state tariffs. The federally tariffed services must not be tariffed as additional screening services to which IPP

providers must subscribe in addition to state tariffed screening services in order to obtain comprehensive protection.<sup>2</sup>

For example, in those instances where charges for screening services continue to be bundled into state tariffs for the basic service offered to IPP providers, IPP providers should not be required to purchase duplicative screening services under federal tariffs in order to obtain the same protection they currently receive under the state tariff alone.

On the other hand, in areas where state-tariffed OLS and BNS services are not now available, payphone operators should be permitted to subscribe to comprehensive screening services under federal tariff. Finally, in states where OLS and BNS services are provided on an unbundled basis, it is reasonable for IPP providers to be permitted to subscribe to screening services under either the state tariff or the federal tariff.

**B. Any Charges For Providing Federally Tariffed  
OLS And BNS Services Should Be Minimal**

Any costs of providing federally tariffed OLS and BNS services to IPP providers should be minimal. To the extent that OLS and BNS services already are provided by LECs under their state tariffs, the related "infrastructure" is already in place. The LECs will

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<sup>2</sup> To avoid charging payphone providers twice for the same OLS and BNS service (i.e., once under state tariff and once under federal tariff), federally tariffed screening services should not be limited to interstate and international (as opposed to intrastate) calls. Just as state tariff offerings do not differentiate between intrastate calls, on the one hand, and interstate and international calls on the other hand, the federal tariff also should avoid any such distinction.

incur little (if any) operating costs as a consequence of being required to federally tariff those services.<sup>3</sup> Moreover, the cost associated with making the services available to an IPP provider who opts to receive them is a one-time, non-recurring event. Overhead loading should not be applied. In addition, the LECs will not even incur a service order-related cost for these services if they are selected when the initial line service is ordered. Even "translation" costs associated with making the services available are minimal; for example, if a subscriber orders international direct dial blocking ("IDDB") service at the same time as OLS or BNS services, any cost of installing the services is already covered by the IDDB charge.

In any event, most LECs no doubt already have recovered revenues far exceeding the actual costs associated with providing OLS and BNS service to IPP providers through the substantial recurring charges which have been assessed against payphone providers under state tariffs. There is no justification for permitting the LECs to recover those same costs under a federal tariff.

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<sup>3</sup> The Commission should require the LECs to describe what costs they expect to incur in the process of offering OLS and BNS services under federal tariff. The Commission should also require the LECs to explain the related technical matters of how ANI information digits are generated and transmitted (e.g., whether they are transmitted on all calls, or just some calls; whether the costs to the LEC would be greater to suppress transmission of the digits rather than to transmit the digits). The Commission should further require the LECs to explain how they recover costs associated with their current OLS and BNS services.

**C. The Cost Burdens Associated With OLS And BNS Services Should Be Borne By The Beneficiaries Of Those Services -- Not Only By IPP Providers**

The Commission specifically seeks comment on whether LIDB service is a substitute for BNS and should be "offered to aggregators rather than OSPs." NPRM, ¶ 27. This statement suggests that charges for costs associated with LIDB service could be shifted from OSPs to IPP providers and other aggregators. APCC's understanding is that LIDB service enables IXC and OSPs to query a database and discover any billing restrictions associated with a line. Charges are based on whether an IXC or OSP subscribes to the service and how many times the IXC or OSP uses the service. Clearly it would be inappropriate to require IPP providers or other subscribers to bear the cost burden for providing a service that directly benefits IXCs and OSPs by providing them with information which they can use to prevent telephone fraud, especially when IPP providers are in no position to control the amounts and usage of the services. Similar considerations apply to the transmission of ANI information digits to IXCs and OSPs in the context of OLS.

More generally, the Commission must recognize that it is entirely appropriate for parties other than IPP providers and aggregators to share in recovery of costs associated with OLS and BNS. Assuming, arguendo, that the LECs incur significant costs in connection with providing OLS, BNS and related services under federal tariff, costs relating to those services should not be recovered from IPP providers and aggregators alone. Payphone fraud affects not only independent payphone operators, but others as

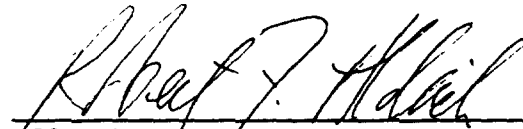
well, including IXCs, OSPs, and the general public. IXCs and OSPs may lose revenue from fraudulent charges they cannot collect, and much of the cost of fraud is ultimately passed on to the general public. Federally tariffed OLS and BNS services will benefit all of these parties, in addition to IPP providers and aggregators. Since the benefits of OLS and BNS services will be shared by all, other parties should pay a share of the financial burdens associated with those services.

#### **CONCLUSION**

The American Public Communications Council agrees with the Commission's tentative conclusion that originating line screening and billed number screening should be federally tariffed. Only by requiring the filing of federal tariffs can the Commission ensure that all LECs will provide public payphone operators with effective screening measures to prevent interstate and international toll fraud. The costs for such federal tariffing should not be substantial since the services already are operational, only minimal non-recurring costs are involved, and most of these costs already have been recovered under state tariffs. Finally, it is entirely appropriate for IXCs and OSPs to pay a share of the costs associated with OLS and BNS services. IXCs and OSPs utilize screening information and gain direct benefits from the service. Since parties other than payphone providers, including the general

public, benefit from these screening services, it is appropriate for others to share in their cost.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Robert F. Aldrich", written over a horizontal line.

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Attorneys for the American Public  
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Dated: May 10, 1993

FCC 93-138

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 91-35
Operator Service Access and	)	
Pay Telephone Compensation	)	

**ORDER ON FURTHER RECONSIDERATION  
AND FURTHER NOTICE OF PROPOSED RULEMAKING**

Adopted: March 11, 1993; Released: April 9, 1993

By the Commission: Commissioner Duggan issuing a statement.

Comment Date: May 10, 1993

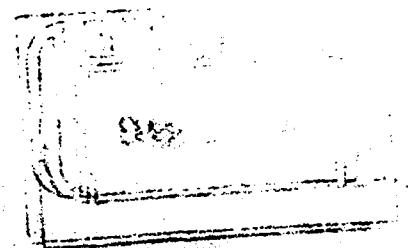
Reply Comment Date: June 9, 1993

**I. INTRODUCTION**

1. We have before us petitions for reconsideration or clarification of policies and rules the Commission recently adopted in its Order on Reconsideration in the above-captioned docket<sup>1</sup> concerning blocking and screening services which local exchange carriers (LECs) must offer to operator service providers (OSPs). For the reasons set forth below, we reaffirm and clarify the requirements in the Reconsideration Order that LECs must provide a discrete federally tariffed service which blocks all direct-dialed international calls and that they must provide originating line screening (OLS) and billed number screening (BNS) as tariffed services. We

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<sup>1</sup> See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, CC Docket No. 91-35, Report and Order and Further Notice of Proposed Rule Making, 6 FCC Rod 4736 (1991); Second Report and Order, 7 FCC Rod 3251 (1992); and Order on Reconsideration, 7 FCC Rod 4355 (Reconsideration Order) (1992).





clarify that we will not further delay the unblocking of 10XXX access. We also propose general principles that must be adhered to by LECs providing required OLS and BNS services. We request comment on those principles and on the question of whether LECs should be required to make their international blocking services available to all customers, not just aggregators. Finally, we request comment on whether we should require that BNS and OLS services be tariffed at the federal level.

## II. BACKGROUND

2. Previous legislative and administrative actions relating to the practices of OSPs have included a general Commission rulemaking proceeding, CC Docket No. 90-313,<sup>2</sup> federal legislation,<sup>3</sup> and the current proceeding, CC Docket No. 91-35. In the first phase of CC Docket No. 91-35, we ordered all call aggregators to unblock 10XXX access but refrained from requiring LECs to offer blocking and screening services which would help call aggregators protect themselves from losses due to fraud.<sup>4</sup> In our Reconsideration Order, however, we ordered LECs to federally tariff services which would block international direct-dialed sequences (011+ and 10XXX-011+). We also required the LECs to offer two tariffed screening services, OLS and BNS, which indicate to operator service providers any billing restrictions on lines to which a caller may seek to bill a call.<sup>5</sup> The Reconsideration Order required the LECs to comply with these requirements by January 10, 1993.

3. Seven LECs filed petitions for reconsideration of the blocking and screening requirements in the Reconsideration Order.<sup>6</sup> Five oppositions and seven replies were also filed in this proceeding.<sup>7</sup>

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<sup>2</sup> Policies and Rules Concerning Operator Services Providers, CC Docket No. 90-313, Report and Order, 6 FCC Rod 2744 (1991); Order on Reconsideration, 7 FCC Rod 3882 (1992).

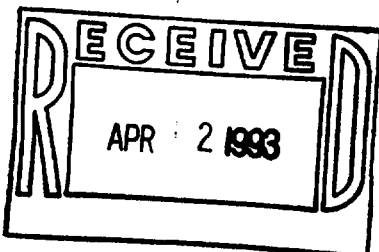
<sup>3</sup> The Telephone Operator Consumer Services Improvement Act of 1990, which added Section 226 to the Communications Act of 1934, Pub. L. No. 101-435, 104 Stat. 986 (1990) (codified at 47 U.S.C. § 226).

<sup>4</sup> Report and Order, 6 FCC Rod at 4741.

<sup>5</sup> Reconsideration Order, 7 FCC Rod at 4361.

<sup>6</sup> The petitioning LECs are Bell Atlantic, CBT, GTE, NYNEX, Pacific, SNET and SWBT. Those petitions were all filed on September 3, 1992. SNET filed a corrected copy of its petition on September 9, 1992.

<sup>7</sup> By October 20, 1992, the following parties had filed oppositions to the petitions for reconsideration: APCC, AT&T, MCI and Sprint. USTA filed a pleading on this date captioned "Comments." APCC, Ameritech, Bell Atlantic, CBT, MCI, NYNEX and Pacific all filed replies by November 4, 1992.



### III. DISCUSSION

#### A. Jurisdictional Issues

##### 1. Commission Jurisdiction Over International Blocking

4. Petitions and Comments. Pacific argues that the Commission lacks authority under Sections 201-205 of the Communications Act, 47 U.S.C. §§ 201-205, to order Pacific to provide a new interstate service, especially one which, Pacific alleges, is completely unrelated to any existing interstate service.<sup>8</sup> Pacific further says that the Reconsideration Order needlessly, arbitrarily and unlawfully displaces state regulation of blocking services for international calls. None of the petitions directly addressed whether the Commission has the jurisdiction to require the LECs to federally tariff the screening services mandated by the Reconsideration Order.

5. Discussion. The Reconsideration Order limits the blocking requirement to international direct dialed calls and expressly declines to require the LECs to offer domestic call blocking service.<sup>9</sup> Section 2(a) of the Communications Act, 47 U.S.C. § 152(a), gives the Commission jurisdiction over "all interstate and foreign communication...", while Section 2(b), 47 U.S.C. § 152(b), denies the Commission jurisdiction with respect to "charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier...." Pacific's argument is that the blocking function, because it takes place in the local switch and because all other end user blocking services are tariffed at the state level, is necessarily an intrastate function over which the Commission lacks jurisdiction.

6. Pacific's argument, however, ignores the fact that we are dealing with international communications, over which the Communications Act gives the Commission exclusive jurisdiction. The fact that the blocking function takes place in the local switch or is an option currently offered as a supplement to a local service does not determine jurisdiction for a function

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<sup>8</sup> Pacific Petition at 2-4. Pacific cites several cases, including *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986) (*Louisiana*), and *California v. FCC*, 905 F.2d 1217 (9th Cir. 1990) (*California*), to support its contention that we lack the jurisdiction to order federal tariffing of this service. Pacific also claims that there is no evidence that international blocking services are interstate services and argues that federal tariffing has no rational basis and does not further a valid purpose.

<sup>9</sup> Reconsideration Order, 7 FCC Rod at 4361.

that is related solely to international communications.<sup>10</sup> Therefore, Pacific's reliance on Louisiana and California is misplaced; those cases dealt with the federal preemption of intrastate regulation of jurisdictionally mixed services. In the present case, the service in question is purely international and therefore within the Commission's exclusive jurisdiction.

7. In any event, Section 226(g) of the Communications Act<sup>11</sup> also grants us authority to impose this blocking requirement. That section directs the Commission to require such actions as are necessary to ensure that aggregators are not exposed to undue risk of fraud. In the present case, all aggregators are required to unblock 10XXX and may thereby be exposed to some risk of toll fraud if they are not able to take adequate measures to protect themselves. Petitioners would have us leave the fraud protection to state tariffs. However, the record shows that some of the currently available state services may fall short of what we have determined, as a matter of federal policy, is necessary to prevent toll fraud. Many state tariffs either do not provide international blocking services or do not make the service available to all aggregators. Moreover, some of these tariffs combine international call blocking with other services so that the aggregators lose desired revenue if they subscribe to the international blocking services.

8. In any event, if we decide to require federal tariffing of the OLS and ENS services used with interstate communications services as we later propose in this order, we do not intend to preempt states from regulating the manner in which these screening services are provided in connection with intrastate communications services. Therefore, the proposed requirement would be in compliance with Section 152 of the Communications Act because it would preserve state jurisdiction over the provision of such services for

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<sup>10</sup> See e.g., State Corporation Commission of Kansas v. FCC, 787 F.2d 1421, 1427 (10th Cir. 1986); National Association of Regulatory Utility Commissioners v. FCC, 746 F.2d 1492, 1498 (D.C.Cir. 1984) (NARUC - WATS); New York Tel. Co. v. FCC, 631 F.2d 1059, 1065-66 (2d Cir. 1980); Puerto Rico Tel. Co. v. FCC, 553 F.2d 694, 699-700 (1st Cir. 1977); North Carolina Utilities Commission v. FCC, 537 F.2d 787, 793 (4th Cir. 1976). Cf. United States v. Southwestern Cable Co., 392 U.S. 157, 168-69 (1968). Writing in 1984, Judge Bork observed: "Every court that has considered the matter has emphasized that the nature of the communications is determinative [of FCC jurisdiction] rather than the physical location of the facilities used." NARUC-WATS, 746 F.2d at 1498. The Supreme Court's decision in Louisiana did not alter this well-established principle. See Public Utility Commission of Texas v. FCC, 886 F.2d 1325, 1327-35 (D.C. Cir. 1989).

<sup>11</sup> 47 U.S.C. § 226(g). Section 226 is the Telephone Operator Consumer Services Improvement Act of 1990. See n.3, *supra*. Section 226 establishes a general regulatory framework for operator services, including the filing of informational tariffs for OSP services and the unblocking of access to non-presubscribed carriers.

intrastate calls.

## 2. Carrier Initiated Tariffs

9. Petitions and Comments. Pacific alleges that the Communications Act does not grant the Commission the authority to require the filing of tariffs for what it claims are local services not currently provided under interstate tariffs. It specifically cites Sections 201-205 of the Communications Act as creating a system of carrier-initiated tariffs and interprets that as denying the Commission the power to order services which it claims are local to be federally tariffed.<sup>12</sup> Further, Pacific argues that the Commission cannot take this action under ancillary jurisdiction because that would conflict with and destroy the balance that, Pacific argues, is created by Sections 201-205 of the Communications Act.<sup>13</sup>

10. Discussion. As noted above, contrary to the premise of Pacific's argument, international call blocking is an international, not a local, service. Accordingly, the Commission has the authority to order the LECs to tariff this international service.<sup>14</sup> Moreover, the Commission has been charged by Congress with the responsibility for regulating the operator services industry and the reduction of toll fraud was an express part of that mandate.<sup>15</sup> To the extent that Pacific is also arguing that the Commission cannot require it to offer the service and tariff it, even assuming it is an international service, the Commission's authority to order LECs to file interstate tariffs has long been recognized if that action furthers statutory objectives and otherwise complies with statutory limitations.<sup>16</sup> Therefore, we reject Pacific's contention that the Commission can only act in response to carrier initiated tariffs.

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<sup>12</sup> Pacific Petition at 9.

<sup>13</sup> Id. at 10 and n.13.

<sup>14</sup> See 47 U.S.C. §§ 152(a), 203.

<sup>15</sup> See n. 3, supra.

<sup>16</sup> See Lincoln Tel. and Tel. Co. v. FCC, 659 F. 2d 1092, 1108-09 (1981) The court upheld the Commission's authority to require Lincoln to file an interstate tariff detailing the charges and regulations covering interconnection. The court stated that Commission's authority to require such filings can be based on Sections 154(i) and 203(a), 47 U.S.C. §§ 154(i) and 203(a), see also 47 U.S.C. §§ 201-205; Access Charges Proceeding: MTS and WATS Market Structure, Docket No. 78-72, Third Report and Order, 93 FCC 2d 241, 327 (1983), aff'd and remanded in part, National Association of Regulatory Utility Commissioners v. FCC, 737 F.2d 1095 (D.C. Cir. 1984), cert den. 105 S.Ct. 1224, 1225 (1985).

## B. LEC Blocking Services

11. Petitions and Comments. Petitioners and USTA generally oppose federal tariffing of international call blocking as duplicative, unwise and difficult to implement.<sup>17</sup> Also, Petitioners argue that we should change our decision in the Reconsideration Order so that we would allow the LECs' state tariffed services to fulfill our international blocking requirement.<sup>18</sup> GTE states that it cannot mix its billing systems, one for end user services and one for access services, and that it would be difficult to administer billing if international call blocking was federally tariffed.<sup>19</sup>

12. Finally, APOC and AT&T support federal tariffing. AT&T states that it is necessary because the international blocking offerings of many LECs are not available to all aggregators but are restricted to Customer Owned Coin Operated Telephones (COCOTs).<sup>20</sup> APOC argues that New York Telephone Company's international call blocking service is inadequate because it combines international direct-dialed blocking services with domestic direct-dial interLATA (1+) blocking, which requires aggregators to forego revenues from desirable interLATA traffic in order to block unwanted international traffic. APOC also states that, when that service was first introduced, it failed to transmit system intercept tones and suppressed the transmission of ANI codes on operator-assisted calls, thereby subjecting some subscribing aggregators to increased fraud. APOC also states that aggregators continue to experience problems with the consistency and reliability of that service.<sup>21</sup>

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<sup>17</sup> SWBT also states that blocking is not possible for switched access traffic for some types of trunk side connections, specifically Circuit Switched Trunk Side Alternative B Basic Service Arrangement (BSA-B) and Circuit Switched Trunk Side Alternative D Basic Serving Arrangement (BSA-D). SWBT Petition at 2. However, SWBT's argument incorrectly assumes that the Reconsideration Order requires the LECs to provide the capability of blocking international calls on every access service in their interstate tariff.

<sup>18</sup> GTE Petition at 2 (stating that blocking services for end users are traditionally contained in local exchange tariffs); SNET Petition at 2-3 (arguing that blocking is more appropriately offered in state exchange tariff); CBT Petition at 2; SWBT Petition at 4. However, none of the LECs proposing to rely on blocking services tariffed at the state level have provided any detailed information about those services.

<sup>19</sup> GTE Petition at 3; SNET Petition at 4 (arguing that federal tariffing would require SNET to issue a separate bill to each customer each month).

<sup>20</sup> AT&T Opposition at 5 (stating that Ameritech, Bell Atlantic, BellSouth, Southwestern Bell, GTE and Centel "often" have this restriction).

<sup>21</sup> APOC Opposition at 11 n.9.

13. Discussion. We affirm the Reconsideration Order requirement that the LECs provide a discrete federally tariffed service which blocks all direct-dialed international calls (011+ and 10XXX-011+). The petitioning LECs do not dispute that such blocking is an effective means of reducing fraud; they primarily object to blocking services being tariffed at the federal level and point out jurisdictional and implementation problems which they believe such tariffing will create. While we recognize that there may be some initial difficulties in implementing this requirement, we believe that they are clearly outweighed by the public interest in providing a uniform nationwide blocking service which does not exclude any class of aggregators, which effectively deters toll fraud, and which satisfies the requirements of Section 226(g) of the Act.

14. Because of the apparent interest of some parties, we also solicit additional comment on whether we should require that LECs make their international call blocking services available to all customers, rather than just aggregators.<sup>22</sup> Specifically, we request comment on whether a discrete federally tariffed international call blocking service is useful in helping non-aggregator business customers prevent toll fraud and whether it should also be available to residential customers. We recognize that imposing such requirements on carriers might prove burdensome. Accordingly, we seek comment on the nature and extent of such burdens or administrative problems as well as on the benefits to consumers in terms of providing protection against toll fraud.

### C. LEC Screening Services

#### 1. State or Federal Tariffing

15. Petitions and Comments. Petitioners ask us to clarify whether their state tariffed OLS services satisfy the Reconsideration Order.<sup>23</sup> SNET states that it is uncertain whether the order requires that the mandated screening services be filed in its interstate access tariffs and asks that the Commission clarify this issue by allowing it to meet any interstate tariffing requirement by certifying to the Commission that OLS and EIS services are available under its intrastate tariffs.<sup>24</sup> Bell Atlantic asks the Commission to confirm that the OLS service it offers to carriers through its "Line Number Toll Screening database" satisfies the Commission's

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<sup>22</sup> In pleadings filed in response to LEC international call blocking tariffs required in Docket 91-35, this issue was presented to the Commission. See, e.g., Comments of APOC on Southwestern Bell Telephone Transmittal No. 2242, at 8 (filed December 10, 1992), and APOC Comments on GTOC Transmittal No. 752, at 4 (filed November 25, 1992).

<sup>23</sup> Pacific Petition at 2 n.2; NYNEX Petition at 3; SNET Petition at 5.

<sup>24</sup> SNET Petition at 5.

requirements.<sup>25</sup>

16. Discussion. In order to assure that the screening services for interstate communications, which are required in the Reconsideration Order, adequately ensure that aggregators are not exposed to an undue risk of fraud, we tentatively conclude that they should be tariffed at the federal level. We further tentatively find that, for interstate traffic, OLS and ENS services must: (1) be generally available and not restricted to any class of customers, (2) be provided as a discrete unbundled service and (3) be provided at a reasonable rate. Furthermore, with regard to OLS services, all LECs must assign the screening codes in a nationally uniform manner.

17. The LECs could apparently add OLS and ENS services to their interstate access tariffs, in much the same way that they added blocking of direct-dialed international calls. If this were done, the Commission could review those tariffs and ensure that they comply with our proposed minimum requirements. As a practical matter it might be difficult for the Commission to review the content of those services or require revisions if the services are tariffed only at the state level. The Commission might have to initially review the content of those state tariffs, and also conduct another review each time the LECs amended their state tariffs. Commission acceptance of state tariffed OLS and ENS services could require the Commission either to be intrusively involved in the state tariffing process or to regulate less effectively the content of the screening services.

18. Finally, we recognize that some LECs may have planned to rely on their state tariffed services to meet the screening service requirement. As indicated below, we have to develop a further record before finally deciding whether to require these screening services to be federally tariffed. In the meantime, however, we do not find that relying on state tariffed services will create a risk of toll fraud sufficient to require the deferral of 10XXX unblocking. Therefore, we will allow LECs to use state tariffed screening services, pending the outcome of this proceeding.

## 2. Screening of Originating Lines

19. Petitions and Comments. Several Petitioners comment that they currently offer OLS service. This service is typically delivered through the transmission of a two digit class of service code on each call originating from a line taking OLS service.<sup>26</sup> The LECs generally use the information indicators, generally referred to as "II" digits, which are sent with the Automatic Number Identification ("ANI"), in a combination known as

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<sup>25</sup> Bell Atlantic Petition at 2-3.

<sup>26</sup> NYNEX Petition at 3; CBT Petition at 2-3.

"ANI II."<sup>27</sup> Additionally, several of the LECs have supplemental databases containing more detailed information about the nature of the billing restrictions which apply to a particular line. Pacific, Bell Atlantic and SNET each state that they offer some form of OLS but do not specifically describe their services.<sup>28</sup> NYNEX asks that it not be required to tariff its database which provides more detailed information about the specific billing restriction on the line.<sup>29</sup>

20. In their oppositions, other parties argue that the OLS services currently offered in the LECs' state tariffs are not adequate to protect aggregators against toll fraud.<sup>30</sup> APOC argues that the LECs' OLS services should provide more information about the exact nature of the billing restrictions than they currently provide, either through the provision of codes unique to aggregators or through databases which give more detailed information.<sup>31</sup> AT&T states that LEC screening services should be made available to all aggregators, not just COCOTs, and that the LECs should be required to offer them on an unbundled basis.<sup>32</sup> MCI states that the OSP needs to receive uniform signals from all LECs in order to properly identify

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<sup>27</sup> This two digit numerical code can be sent with ANI. For example, the code "07" has been assigned the designation "Inmate/Hospitals/Coinless Public Telephones" and several LECs indicate that this is the code that is generally used to designate aggregator lines. APOC Opposition at 20; Pacific Reply at 5; NYNEX Reply at 1 n.1; Ameritech Reply at 1. For ANI II, adding new two digit codes is administratively difficult. A more advanced version of this service is being deployed as Flex ANI, in which new codes are more easily added. See e.g. SWBT Tariff F.C.C. No. 73, Sections 6.5.2 (B) (2) and 6.5.2 (B) (31).

<sup>28</sup> Pacific Petition at 2 n.2; Bell Atlantic Petition at 2 (has provided carriers with originating line screening since 1989 through license of a Line Number Toll Screening database); SNET Petition at Exhibit I.

<sup>29</sup> NYNEX Petition at 3.

<sup>30</sup> See e.g., MCI Opposition at 3 (stating that the Commission also should require the provision of the two digit ("II") information code in the LEC's interstate switched access tariffs to ensure that all OSPs purchasing switched access service receive the information digits).

<sup>31</sup> APOC Opposition at 21; but see MCI Reply at 2 (supports need for specific, identifiable code for aggregators but opposes requiring LECs to provide databases); see also, NYNEX Reply at 2 (NYNEX has recently filed a tariff to introduce a flexible ANI service that will provide three additional Bellcore-assigned ANI codes to operator services providers).

<sup>32</sup> AT&T Opposition at 7 (AT&T alleges that OLS is often bundled with blocking of 1+ service, thereby requiring aggregators to forego revenue from the resale of domestic traffic in order to obtain OLS service).



restrictions on the line and prevent fraud.<sup>33</sup> MCI also states that some LECs provide basic business service to payphone providers so that the information indicators accompanying the ANI from such a phone identify the line as a regular business line and, therefore, fail to indicate that any billing restrictions exist on the line.<sup>34</sup>

21. In its reply, Pacific states that its duty should be to deliver the two digit ANI II code and that it should be the IXC's responsibility to develop a more detailed database from the information the IXC receives when the line is presubscribed.<sup>35</sup> It also states that several MCI and AT&T requests exceed the Reconsideration Order's requirements with regard to screening services and that these parties should have filed their own motions for reconsideration if they wanted to amend the Commission's decision.<sup>36</sup> MCI's reply raises the issue of whether our Reconsideration Order required LECs to provide screening services to aggregators or OSPs.<sup>37</sup> CBT argues that requiring implementation of a new ANI II code would be expensive and the demand for it is doubtful.<sup>38</sup>

22. Discussion. The Reconsideration Order found that OLS "may provide a useful fraud control mechanism" and directed local exchange carriers to offer, in locations where technically feasible, tariffed OLS services which indicate to OSPs any billing restrictions on lines to which a caller may seek to bill a call.<sup>39</sup> The Reconsideration Order also noted that screening services were already widely offered by the LECs.<sup>40</sup> There was a divergence of opinion among the parties about whether the LECs' state tariffed OLS services would meet the requirements of the order.<sup>41</sup> For example, several

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<sup>33</sup> MCI Opposition at 3.

<sup>34</sup> Id.

<sup>35</sup> Pacific Reply at 6. However, Pacific's Reply fails to recognize that OLS screening services will be used by OSPs when processing calls dialed with a 10XXX dialing sequence and that those OSPs would be unable to obtain information about billing restrictions on lines not presubscribed to them.

<sup>36</sup> Id. at 4.

<sup>37</sup> MCI Reply at 2; See also Ameritech Reply at 1 (interprets order as requiring that screening services be provided to OSPs).

<sup>38</sup> CBT Reply at 2.

<sup>39</sup> Reconsideration Order, 7 FCC Rcd at 4361.

<sup>40</sup> Id.

<sup>41</sup> See e.g. SNET Petition at 2 (not clear what specific services or tariff offerings the Commission contemplates or whether SNET's present state tariffed service offerings meet the Commission's intent); APOC Opposition at